

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAROL GANDEE, )  
Plaintiff, )  
vs. ) Civil Action No. 05-1593  
JO ANNE B. BARNHART, )  
COMMISSIONER OF SOCIAL )  
SECURITY, )  
Defendant. )

JUDGMENT ORDER

This is an appeal from the final decision of the Commissioner denying plaintiff's claim for supplemental security income under Title XVI of the Social Security Act. 42 U.S.C. § 1381, et. seq. Plaintiff, Carol Gandee, alleges that this court should reverse the decision of the ALJ and award her benefits because she is disabled due to depression and anxiety. The parties have filed cross-motions for summary judgment.

Plaintiff argues that the ALJ erred in determining that her alcohol and drug addictions were material to the disability determination. Specifically, plaintiff alleges that there is no evidentiary support for the ALJ's finding that she was still using alcohol in December of 2004. Plaintiff also claims that the ALJ failed to follow the appropriate sequential process for assessing the effect of her alcohol addiction on the disability determination and failed to follow agency policy directives regarding how to evaluate the materiality of plaintiff's

substance abuse. Defendant contends that there is substantial evidence to support the ALJ's ultimate conclusion that plaintiff is not disabled under the Act. According to defendant, the ALJ properly evaluated and considered plaintiff's substance abuse in making his ultimate disability determination.

Where the Commissioner's<sup>1</sup> findings are supported by substantial evidence, we must affirm. Richardson v. Perales, 402 U.S. 389 (1971); Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992); Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988); see also Welch v. Heckler, 808 F.2d 264, 266-7 (3d Cir. 1988) (if supported by substantial evidence, the Commissioner's decision must be affirmed, as a federal district court may neither reweigh the evidence, nor reverse the Administrative Law Judge merely because it would have decided the claim differently). Based on the evidence of record and the briefs filed in support of each party's summary judgment motion, the court concludes that substantial evidence supports the Commissioner's finding that plaintiff is not disabled.

The ALJ gave full and appropriate consideration to plaintiff's substance abuse in making the disability determination. The ALJ's determination that plaintiff had a

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<sup>1</sup> The ALJ's decision became the final decision of the Commissioner after the Appeals Council denied plaintiff's request for review.

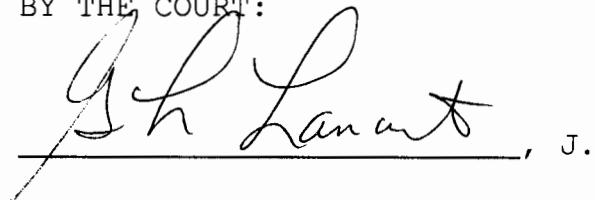
continuing alcohol abuse problem is supported by the record, including plaintiff's own hearing testimony that she was still drinking as of December 2004. Now, plaintiff claims, without independent support or evidence, to have stopped using alcohol and drugs by January of 2004, after more than 20 years of addiction, and without counseling, rehabilitation, or medical intervention. She offers no explanation as to why she testified at the disability hearing that she had been drinking in December of 2004.

Furthermore, the ALJ did consider that plaintiff reported improvement in her mental difficulties during those times that she claimed to not be using drugs or alcohol. Under the circumstances, the ALJ committed no error of fact, or law, in evaluating the effect of plaintiff's substance abuse on her alleged disability. The decision of the ALJ denying plaintiff's application for supplemental security income will be affirmed.

AND NOW, this 22<sup>nd</sup> day of January, 2007, IT IS HEREBY ORDERED that plaintiff's motion for summary judgment [doc. no. 8] is DENIED and defendant's motion for summary judgment [doc. no. 13] is GRANTED.

IT IS FURTHER ORDERED that final judgment in this court is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Clerk of Court is directed to mark this case closed.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Schlesinger", is written over a horizontal line. Above the signature, the words "BY THE COURT:" are printed in a smaller, sans-serif font.

cc: All Counsel of Record